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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,699	11/15/2001	Jean-Claude Kucza		7173

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Connolly Bove Lodge & Hutz LLP
1990 M Street, NW Suite 800
Washington, DC 20036-3425

EXAMINER	
WYSZOMIERSKI, GEORGE P	
ART UNIT	PAPER NUMBER
1742	9

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/987,699	REMOND ET AL.	
	Examiner	Art Unit	
	George P Wyszomi rski	1742	

-- The MAILING DATE of this communication appears on the cover she t with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 July 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) *8* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *7* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. Applicant's election with traverse of Group I, claims 1-7 in Paper no. 8 is acknowledged. The traversal is on the grounds that a search for the non-elected product necessarily involves the same search as that for the elected process, and/or that the guidelines of *In re Ochiai* would indicate that both groups of claims should be examined together. This is not persuasive because a search for the non-elected claim would clearly involve a search in subclass(es) in class 420 and/or 428 not related to the search for the elected group. With respect to *Ochiai*, that decision indicates that if a product is found to be allowable, then claims directed to a process of making or using that particular product should also be considered allowable and rejoined if appropriate. None of the elected claims are directed to a product and thus *Ochiai* does not apply at present. The requirement is still deemed proper and is made FINAL.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sontgerath et al. (U.S. Patent 6,294,272) in view of Papich et al. (U.S. Patent 5,476,725).

As stated in the previous Office Action, Sontgerath discloses a process for making brazed assemblies substantially as set forth in lines 3-10 of instant claim 1, i.e. casting, homogenizing, cladding to another alloy, hot rolling, cold rolling, and annealing, all within parameters as presently claimed. Sontgerath does not disclose a strain hardening step as recited in the instant claims, and the alloy used in Sontgerath contains a higher percentage of chromium

and zirconium than that used in the presently claimed process. These differences are not seen as resulting in a patentable distinction between the prior art and the claimed invention because:

a) Column 2 of Papich indicates it to be conventional in the art to strain harden 3000 series aluminum alloys which have been cast, homogenized, hot and cold rolled, and annealed, and which are to be used in making brazed assemblies. Thus, to incorporate a final strain hardening step into the process as disclosed by Sontgerath would have been considered obvious by a person of ordinary skill in the art.

b) The Sontgerath process is drawn to a series of steps performed upon an aluminum alloy containing amounts of silicon, iron, copper, manganese, magnesium and titanium which significantly overlap the amounts used in the process as defined by the instant claims. One of ordinary skill in the art would expect to achieve success in applying similar process steps as done by Sontgerath to alloys containing differing amounts of minor elements.

Consequently, the disclosure of Sontgerath together with that of Papich et al. would have taught the claimed invention to a person having ordinary skill in the art.

4. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8, 15, and 21 of U.S. Patent No. 6,451,453 in view of Papich et al. The above noted claims of the '453 patent recite a process for making a strip for use in a brazed heat exchanger made of an alloy substantially overlapping that of the instant claims, with the exception that the '453 claims do not recite the strain hardening step of the instant claims. The Papich patent indicates it to be conventional in the art to subject 3000 series aluminum alloys (i.e. alloys similar to those used in the '453 claims) to a final strain hardening

step. Because one of ordinary skill in the art, given the teachings of Papich, would have included a final strain hardening step after the process as defined in the '453 claims, the presently claimed process cannot be said to be patentably distinct from that as recited in the '453 claims.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. In a response filed July 3, 2003, Applicant alleges that the strain hardening as claimed is different from that of the prior art (e.g. results in a different amount of permanent deformation), and/or that the chromium and zirconium amounts of instant claim 2 are different from those of Sontgerath. Applicant's arguments have been carefully considered, but are not persuasive of patentability because Applicant has not shown that any actual difference exists between the amount of permanent deformation in the prior art and that as presently claimed. Further, Papich column 13, line 45 discloses an H14 temper which would likely result in an amount of deformation within the presently claimed ranges. With regard to chromium and zirconium, Papich column 6, lines 47-56 clearly indicates these elements are optional and not required in the prior art.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (703) 308-2531. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (703) 308-1146. The fax phone number for this Group is (703) 872-9310 for all correspondence except for After Final amendments in which case the Fax number is (703) 872-9311. The Right fax number for this examiner is (703) 872-9039. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

GEORGE WYSZOMIERSKI
PRIMARY EXAMINER

GPW
August 27, 2003